

Chief Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

HUAWEI DEVICE CO., LTD.,
HUAWEI DEVICE USA, INC.

Defendants.

NO. CR19-010RSM

UNITED STATES' RESPONSE TO
DEFENDANTS' MOTION TO EXCLUDE
IRRELEVANT AND PREJUDICIAL
EVIDENCE AT TRIAL

The United States of America, by and through Tessa M. Gorman, First Assistant United States Attorney for the Western District of Washington (Acting Under Authority Conferred by 28 U.S.C. § 515), and Todd Greenberg, Thomas Woods, and Siddharth Velamoor, Assistant United States Attorneys for said District, hereby files this response to the Defendants' Motion to Exclude Irrelevant and Prejudicial Evidence at Trial (Dkt. 53).

The defendants move the Court *in limine* for a ruling excluding at trial evidence related to the allegations contained in paragraphs 38, 47, and 48 of the Indictment. These allegations concern a report issued by the United States House of Representatives Permanent Select Committee on Intelligence, finding, among other things, that Huawei engaged in a “pattern of disregard for the intellectual property rights of other entities and

1 companies in the United States"; lawsuits in which Huawei was sued for theft of
 2 intellectual property by Cisco and Motorola; and a Huawei bonus program designed to
 3 reward Huawei employees for stealing confidential information from competitors.

4 Indictment ¶¶ 37, 47, 48. The defendants argue primarily that none of this evidence is
 5 admissible under Federal Rule of Evidence 404(b), and that it is not otherwise relevant to
 6 the charges and therefore is inadmissible under Rules 401, 402, and 403.

7 The defendants' Motion to Exclude is premature under the Case Scheduling Order
 8 entered by this Court on March 8, 2019, as stipulated to by the parties. Dkt. 39. That
 9 Order sets a deadline of November 4, 2019, by which time the government must provide
 10 notice of intent to admit evidence pursuant to Rule 404(b). Dkt. 39 at page 2, lines 4-5.
 11 In turn, the Order provides a date of December 2, 2019, for the filing of motions to
 12 exclude evidence under Rule 404(b) and "initial motions *in limine*." Dkt. 39 at page 2,
 13 lines 6-7.

14 Under the Court's Order, the government is not required to provide notice under
 15 Rule 404(b) for another ten weeks. There are good reasons that this date was set closer to
 16 the trial date. First, the government's investigation is ongoing, and as a result, additional
 17 information bearing upon the 404(b) notice may still yet be gathered. Second, the
 18 government is in the process of organizing its evidence for trial with a view towards
 19 identifying, in a comprehensive manner, the evidence it intends to offer under
 20 Rule 404(b), rather than engaging in the sort of piecemeal process that would result from
 21 litigating the defendants' motion at this time. Although the government looks forward to
 22 the opportunity to set forth the various reasons why evidence relating to the allegations in
 23 paragraphs 38, 47, and 48 should be admitted at trial, it is premature for it to do so now.

24 WHEREFORE, the government requests that the Court strike the Motion to
 25 Exclude without prejudice, and instruct the defendants to refile the motion subsequent to
 26 their receipt of the government's 404(b) notice. This procedure would not prejudice the
 27
 28

1 defendants in any way, and would be consistent with the Case Scheduling Order entered
2 by the Court upon the stipulation of the parties.

3 DATED this 22nd day of August, 2019.
4

5 Respectfully submitted,

6 TESSA M. GORMAN
7 First Assistant United States Attorney
8 (Acting Under Authority Conferred by
28 U.S.C. § 515)
9

10 s/ Todd Greenberg
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Jenny Fingles
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V.

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**ORDER STRIKING WITHOUT
PREJUDICE DEFENDANTS' MOTION
TO EXCLUDE IRRELEVANT AND
PREJUDICIAL EVIDENCE AT TRIAL**

The Court, having considered the parties' briefing and the relevant record on the Defendants' Motion to Exclude Irrelevant and Prejudicial Evidence at Trial (Dkt. 53), HEREBY strikes the motion without prejudice. The defendants may refile the motion at a time consistent with the Court's Case Scheduling Order (Dkt. 39), and subsequent to the government's provision of notice under Federal Rule of Evidence 404(b) under the terms of that Order.

DATED this day of August, 2019.

RICARDO S. MARTINEZ
Chief United States District Judge

1 Presented by:

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3 TESSA M. GORMAN
4 First Assistant United States Attorney
5 (Acting Under Authority Conferred by 28 U.S.C. § 515)

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